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GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 19th September, 1949

ORDINANCE No. XXIII of 1949.

AN

ORDINANCE

to amend the Banking Companies Act, 1949.

WHEREAS an emergency has arisen which makes it necessary to amend the Banking Companies Act, 1949 (X of 1949), for the purposes hereinafter appearing;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title and commencement.—(1) This Ordinance may be called the Banking Companies (Amendment) Ordinance, 1949.

(2) It shall come into force at once.

2. Insertion of new sections 45A, 45B, 45C, 45D, 45E and 45F as Part IIIA of Act X of 1949.—In the Banking Companies Act, 1949, after Part III, the following shall be inserted, namely:—

“PART IIIA.

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS.

45A. Court defined.—In this Part and in Part III, “Court” means the High Court exercising jurisdiction in the place where the registered office of the banking company which is being wound up is situate, and notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in any notification, order or direction issued thereunder or in any other law for the time being in force, no other Court shall have jurisdiction to entertain any matter relating to or arising out of the winding up of a banking company.

45B. Power of Court to decide all claims by or against banking companies.—(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force, the Court shall have full power to decide all claims made by or

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against any banking company (including claims by or against any of its branches in any Province of India) and all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in the course of the winding up of the banking company coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where the Court does not deem it expedient or necessary to decide any claim or question of the nature referred to in sub-section (1) but has reason to believe that the banking company has a saleable interest in any property, the Court may, without further inquiry, sell such interest in such manner and subject to such conditions as it may think fit.

(3) There shall be a right of appeal from every order or decision made under this section, and the Court may make rules prescribing the manner in which and the conditions subject to which any such appeal may be filed and heard.

(4) Subject to the provisions of sub-section (3) and notwithstanding anything contained in any other law for the time being in force, every such order or decision shall be final and binding for all purposes as between, on the one hand, the banking company and, on the other hand, all claimants against the banking company and all persons claiming through or under them or any of them.

45C. Special provisions for punishing offences in relation to winding up.—

(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), the Code of Criminal Procedure, 1898 (Act V of 1898), or in any other law for the time being in force, the Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the formation or promotion of the banking company which is being wound up or any past or present director, manager or officer thereof:

Provided that the offence is one punishable under the Indian Companies Act, 1913 (VII of 1913), with imprisonment for a term which does not exceed two years, or with fine which does not exceed one thousand rupees.

(2) In the trial of any offence under sub-section (1), the Court—

(a) need not record the evidence or frame a formal charge but the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall so far as may be applicable constitute the whole record of the case;

(b) may refuse to summon any witness, if satisfied that the evidence of such witness will not be material;

(c) shall not be bound to adjourn a trial for any purpose, unless such adjournment is in the opinion of the Court necessary in the interests of justice;

and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply to any such trial.

(3) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under the Indian Companies Act, 1913 (VII of 1913), and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

(1) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Court shall take cognizance of any offence under this section without the accused being committed to it for trial, and all such trials shall be without the aid of a jury.

45D. *Reserve Bank may tender advice in winding up proceedings.*—Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator, the Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the records of any such proceeding and tender such advice on the matter as it may think fit.

45E. *District Magistrate to assist official liquidator in taking charge of property of banking company being wound up.*—(1) For the purpose of enabling the official liquidator to take into his custody or under his control, all property, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator may request in writing the District Magistrate, within whose jurisdiction any property, books of account or other document of such banking company may be situate or is to be found, to take possession thereof, and the District Magistrate shall on such request being made to him take possession of such property, books of account or other document and forward them to the official liquidator.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

45F *Special period of limitation.*—Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908), or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application by a banking company, the period of one year immediately preceding the date of the order for the winding up of the banking company shall be excluded."

3. Transfer of pending proceedings in winding up to the Court exercising jurisdiction under this Ordinance.—Where any proceeding for the winding up of a banking company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding up, is pending in any Court immediately before the commencement of this Ordinance, it shall stand transferred on such commencement to the Court which would have had jurisdiction to entertain such proceeding if this Ordinance had been in force on the date the proceeding commenced, and the Court to which the proceeding stands so transferred shall dispose of the proceeding as if this Ordinance and the amendments made thereby were applicable thereto.

C RAJAGOPALACHARI,
Governor-General.

ORDINANCE No. XXIV OF 1949.

AN

ORDINANCE

to provide for the appoint'ment of an interim administrator for the Durgah Khawaja Sahib, Ajmer, pending inquiry into its affairs.

WHEREAS an emergency has arisen which makes it necessary to provide for the appointment of an interim administrator for the Durgah Khawaja Sahib, Ajmer, pending inquiry into its affairs ;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (28 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance :—

1. Short title and commencement.—(1) This Ordinance may be called the Durgah Khawaja Sahab (Emergency Provisions) Ordinance, 1949.

(2) It shall come into force at once.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) “the Act” means the Durgah Khawaja Sahab Act, 1936 (XXIII of 1936);

(b) “Chief Commissioner” means the Chief Commissioner, Ajmer-Merwara; and

(c) words used but not defined in this Ordinance and defined in the Act have the meanings assigned to them in the Act.

3. Appointment of Administrator.—Notwithstanding anything contained in the Act, the Central Government may, by notification in the official Gazette, vest the administration and control of the Durgah Endowment, which are by sub-section (1) of section 4 of the Act vested in the Committee, in any person (hereinafter referred to as the Administrator), and upon such notification being issued,—

(a) the Administrator shall take the place of, and shall supersede, the Committee constituted under the Act;

(b) the Committee shall cease to have or exercise any powers of administration, control or management in respect of the Durgah Endowment under the Act;

(c) the members of all standing and special committees appointed by the Committee under the Act shall be deemed to have vacated their offices as such.

4. Power to appoint Mutawalli and Advisory Committee.—For the purpose of enabling him to effectively exercise his powers of administration, control and management of the Durgah Endowment, the Administrator may—

(a) appoint a Mutawalli and prescribe his powers and functions;

(b) determine the remuneration payable to any Mutawalli appointed under this section;

(c) appoint an Advisory Committee, consisting of such number of Muslims as the Administrator may think fit, and prescribe its powers and functions.

5. Procedure for decision of disputes in certain cases.—(1) Notwithstanding anything contained in section 16 of the Act, where in the course of administration, control and management of the Durgah Endowment, a dispute arises between the Administrator on the one part and the Sajjadanashin, the Mutawalli and any Khadim, or any of them, on the other part, and such dispute does not relate to any religious usage or custom or to the performance of any religious office, the dispute shall be referred to the Chief Commissioner, and the decision of the Chief Commissioner thereon shall be final and shall not be called in question in any Court.

(2) If any question arises whether a dispute is a dispute relating to any religious usage or custom or to the performance of any religious office, the question shall be decided by the Chief Commissioner and his decision shall be final.

(3) No suit shall lie in any Court in respect of any matter which is required by this section to be decided by the Chief Commissioner.

6. Exercise of powers, etc., by the Administrator.—Subject to the control of the Central Government, the Administrator shall exercise all the powers and discharge all the duties of the Committee under the Act in conformity with the provisions contained therein, in so far as such provisions are not inconsistent with anything contained in this Ordinance.

7. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Administrator or any person acting under his direction in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance

C. RAJAGOPALACHARI,
Governor-General.

K. V. K. SUNDARAM,
Secy. to the Govt. of India.

